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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,014	03/30/2004	Michael Weinberger	LOJM-0462	5570
7590 Michael Weinberger 236 West 26th Street New York, NY 10001				
		EXAMINER VASISTH, VISHAL V		
		ART UNIT 1797		
		MAIL DATE 04/20/2010		
		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/814,014

Applicant(s)

WEINBERGER, MICHAEL

Examiner

VISHAL VASISTH

Art Unit

1797

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 April 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 4.5 and 9-14.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Glenn A Caldarola/
Supervisory Patent Examiner, Art Unit 1797

/Vishal Vasisth/ 4/16/2010

Continuation of 11, does NOT place the application in condition for allowance because:

Applicants argue that a *res judicata* type of precedent should apply and that the standard is one of clear and convincing which has not been demonstrated by the examiner. This argument is not persuasive.

Applicants argue that Chen teaches away from the solution sought by the instant application and therefore one of ordinary skill in the art would not be motivated to look to Chen. Applicant buttresses their argument by pointing to the fact that Chen discloses increasing the intensity of the fire by allowing unrestricted air exchange through the perforated opening at the top of the corrugated plate. This argument is not persuasive. Chen may not be concerned with the appearance of the flame produced by its invention, but Chen and the instant claims produce the flames in the same manner through similar apparatuses wherein the top has an opening that allows for unrestricted air exchange even though the vapor restrictors are claimed within a certain rectangular pattern. The fact that the top of the corrugated plate in Chen has openings all over the surface does not take away from the fact that the air exchange is regulated just as it is in the instant application. One of ordinary skill in the art at the time of the invention would assume that the amount of air exchanged from the external environment is actually regulated by the number and size of the apertures.

Applicants further argue that the cooking basin (Item 3 of Chen) is not rigidly joined to the walls of the cartridge and that the bowl walls per Figure 4 of Chen extend over the fuel container and therefore not provide any vapor restriction. Based on the definition from the instant specification the cooking basin of Chen acts as a plug type lid that seals any of the fuel vapors from exiting and ambient air from entering the burning system because the fuel container is still covered from the top and therefore restricting vapors from entering the system. Although the cooking basin is removable it is the position of the examiner that when it is on top of the cooking apparatus that the apparatus as a whole is in "one piece," and that one of ordinary skill in the art would envisage a one piece apparatus from the disclosure of Chen. The fact that this is not explicitly disclosed and envisaged based on the disclosure of Chen does not necessitate hindsight reconstruction. It seems obvious to one of ordinary skill in the art to restrict heat you would have a lid that can be rigid or removable from covering a fuel container.

/Glenn A. Caldarola/
Supervisory Patent Examiner, Art Unit 1797